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No. 458

In the Supreme Court of the United States

OCTOBER TERM, 1942

GEORGE SYLVESTER VIERECK, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (R. 320–343)[1] has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered September 21, 1942 (R. 344). The petition for a writ of certiorari was filed October 15, 1942. The jurisdiction of this Court is invoked under

[1] References to portions of the record which were printed as an appendix to the petitioner's brief in the court below are designated by R.; and references to matters appearing in the typewritten transcript by Tr.

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the Act of June 8, 1938, as amended in 1939, which provided for the punishment of any political agent of a foreign principal registered with the Secretary of State who "willfully omits to state any material fact required to be stated" in his registration statement, was so indefinite as to be unconstitutional; whether the Secretary was authorized to require a disclosure of all political activities by the registrant, even though they were on his own behalf; and whether the Secretary's requirement that registrants furnish a "comprehensive statement of nature of business of registrant" called for such a disclosure.

2. Whether the United States District Court for the District of Columbia may authorize its grand jury to continue in session beyond the term of court for which it was originally impaneled to finish investigations begun but not completed during the term.

3. Whether the alleged misconduct of the prosecutor constituted reversible error.

STATUTES, RULES, AND REGULATIONS INVOLVED

The full text of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7;

1939, c. 521 (53 Stat. 1244), 22 U. S. C. 611–616, requiring the registration with the Secretary of State of agents of foreign principals, under which appellant was indicted, and the Rules and Regulations and forms issued pursuant thereto, are set forth in full in the Appendix to the petition at pp. 63–66, 82–97. The Act of April 29, 1942 (Pub. 532, c. 263, 77th Cong., 2d sess. (S. 2399)), amending the 1938 Act, is also set forth at pp. 66–82.

STATEMENT

Petitioner was convicted in the United States District Court for the District of Columbia (R. 323) upon three counts of a five-count indictment (R. 1–19)[2] charging violations of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), 22 U. S. C. 611–616, requiring agents of foreign principals to register with the Department of State. In each of the three counts it was alleged that, in certain supplemental registration statements filed by him as agent of three German principals, petitioner knowingly and willfully failed to disclose, in response to requirement No. 11 thereof, specified material facts with reference to his political and propaganda activities. He was sentenced (R. 324–326) to imprisonment for eight months to two years and to pay a fine of $500 on each count, the

[2] A demurrer was sustained as to Counts I and IV (R. 53–56).

terms of imprisonment to run consecutively, and to pay costs. Upon appeal to the Court of Appeals for the District of Columbia, the conviction was affirmed (R. 344).

The Government's case may be summarized as follows:[3]

Petitioner's activities as a propagandist prior to last war.—Petitioner, a native of Germany, acquired American citizenship by virtue of the naturalization of his father in 1901 (R. 22). Beginning in 1907 he engaged in a literary career in this country and abroad, and became known as "the stormy petrel of American literature" (R. 168). However, "the World War diverted Mr. Viereck from poetry to politics" (R. 169), and by 1917 he had become one of Germany's foremost propagandists in this country (Gov't Ex. 12, p. 52).

In 1930 petitioner published a book entitled "Spreading Germs of Hate", which purports to be "an impartial study of war propaganda" (R. 169) and an exposé of petitioner's activities and methods during the last war (Gov't Ex. 12, p. xiii). Thus he made known that (*id.* p. 55):

[3] No error is assigned with respect to the general sufficiency of the evidence, and on this record, as was said by the court below, "none could be" (R. 320). See also Pet. 5ℓ where petitioner admits that he "engaged in some of the activities charged in the indictment." We summarize the evidence merely because an understanding of it is of value in the consideration of the points raised in the petition.

> The objective of German propaganda was three-fold: to strengthen and replenish Germany; to weaken and embarrass Germany's foes; and to keep America out of the War by spreading the truth as the Germans saw it.

To accomplish this objective petitioner engaged in a camouflaged campaign of "manipulating public opinion" (*id.* p. 11) which successfully "kept American sentiment divided even after the Lusitania and played an important part in the presidential campaign in 1916" (*id.* p. 104) and "kept America out of the war from August 1914 to April 1917" (*id.* p. 118).

In explaining the technique of a propagandist, petitioner claimed (*id.* p. 90) that "There is no safeguard which the law can create which human ingenuity cannot circumvent" for—

> It is difficult to draw a line between legitimate political agitation and propaganda. It is not always possible to determine where the one ends and the other begins. It is at times hard to distinguish between the press agent, the lawyer, the public relations counsel, the reporter, the educator, the preacher, the politician, the statesman and the propagandist (*id.* p. 10).

Petitioner further explained that "each side attempted to hide its own selfish end behind some legitimate American purpose. It has been said that patriotism is the last resort of the scoundrel.

It was the first resort of the propagandist. Every propagandist draped himself in the flag" (*id.* p. 106).

In brief, petitioner admitted that prior to America's entry into the last war, as a German propagandist he sought to mold public opinion in this country (1) through the tactic of "a propaganda wolf in sheep's clothing," posing as a friend and constituent giving to Congressmen "suggestions for resolutions" (*id.* pp. 104–105); (2) by the organization of committees which "underwent many metamorphoses and changes of name" but which "were financed from the same secret source" (*id.* p. 99); and (3) "Articles likely to prove effective weapons were reprinted as pamphlets. The smallest edition was twenty-five thousand. Some attained an edition of several hundred thousand" (*id.* p. 82).

Registration statements filed by petitioner.—On September 26, 1939, a few weeks after the present war started, petitioner filed with the State Department a registration statement required by the Foreign Agents Registration Act, as United States correspondent for the *Münchner Neueste Nachrichten,* a newspaper of Munich, Germany, under a one-year contract dated July 20, 1939, providing for compensation at the rate of $500 per month beginning August 1939 (R. 20–25). Later there was also attached to this registration statement a copy of a contract dated September

27, 1939, between the petitioner and the German Library of Information, a branch of the German Government (Tr. 110, 115, 132, 137, 144, 161, 166, 170; and see Tr. 184, 222), by the terms of which petitioner agreed for $500 per month to do editorial work in connection with "Facts in Review," a publication of the Library which eventually attained a circulation of 100,000 copies per week (R. 25–26, 48). On March 17, 1941, petitioner filed another initial registration statement to cover a contract between him and Dr. Giselher Wirsing, of the Munich newspaper, under which petitioner agreed to act as agent for publication in the United States of a book "The One Hundred Families Who Rule Great Britain," written by Wirsing and published by Verlag, Knorr and Hirth, a publishing house in Munich. Petitioner had received $10,000 to be used by him at his discretion to cover publication costs, advertising, publicity, distribution, etc. (R. 37–41).

Following the filing of the initial registration statements, at six months' intervals petitioner filed three supplemental registration statements (R. 26–34, 44–47), as required by the Act, which are the subject matter of the three counts in the indictment upon which he was convicted. These statements show that during the eighteen-month period covered by them petitioner received more than $65,000 from his German principals.

In answer to question 11, on each of the sup-

plemental statements, which called for a "comprehensive statement of nature of business of registrant," he reported "same," as previously reported—that is, "author and journalist." In none of these statements did he disclose any of his activities in the political affairs of this country. As alleged in the indictment, these activities were threefold:

1. *Petitioner's control of Flanders Hall, Inc.*—About August 3, 1940, petitioner took over control of Flanders Hall, Inc., a corporation which had published one book written by one Sigfried Hauck, the organizer of the company, and petitioner hired Hauck to work for him (Tr. 233–234, 237, 251–252, 258–259).[4]

After petitioner assumed control, Flanders Hall published nine books,[5] the manuscripts of which he

[4] Hauck testified that his work for petitioner consisted of "sharpening his pencils and hanging up the shades when he tore them down" (Tr. 237), putting into better English a book which apparently had been translated from a German book (Tr. 238–239), obtaining bids for printing publications of the German Library of Information, reading the Congressional Record each day and picking out pertinent debates, speeches, etc. (Tr. 236–240, 429–430). A great deal of the material Hauck worked on appeared ultimately in "Facts in Review" (Tr. 430–431).

[5] "Inhumanity Unlimited" (Gov't Ex. 7), "Democracy on the Nile" (Gov't Ex. 8), "It Happened Again" (Gov't Ex. 9), "The Hapless Boers" (Gov't Ex. 13), "The Slave Business" (Gov't Ex. 14), "Misadventure in Scandinavia" (Gov't Ex. 15), "The Double Cross in Palestine" (Gov't Ex. 16), "Seven Periods of Irish History" (Gov't Ex. 17), "War Against Women and Children" (Gov't Ex. 18).

furnished (Tr. 261–262, 290–292, 341), and eight others[6] (Tr. 342–343, 366–367), all of them being highly critical of British foreign policy and, more particularly, endeavoring to establish that the British Empire was built upon imperialistic despotism rather than democratic freedom. Some of the books which purported to be English translations of French or Dutch works, or as having been compiled from English sources, were in fact translations of German books published by the *Deutche Informationsstelle*, or German Information Service, of Berlin.[7] As to others, petitioner instructed Hauck to change the name of the purported author after giving him the manuscript.[8]

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[6] "Cease Firing" (Gov't Ex. 28), "Turkey Reborn" (Gov't Ex. 29), "The One Hundred Families That Rule the Empire" (Gov't Ex. 32), "What About Africa" (Gov't Ex. 34), "Children of the Slums" (Gov't Ex. 31), "The Whipping Block" (Gov't Ex. 30), "We Must Save the Republic" (Gov't Ex. 35), "The Way of the Aggressor" (Gov't Ex. 33).

[7] "Inhumanity Unlimited," which purported to be from the French of Jeanne d'Arc Dillon LaTouche, was in fact a translation of a German book, "England's Herrschaft in Indien" by Reinhard Frank, published by the *Deutche Informationsstelle* (Tr. 480–482). "Democracy on the Nile," which purported to be compiled from British sources by Sayid Halassie, Doctor of Divinity, an Ethiopian name, was in fact a translation from a German book, "England's Gewaltpolotik am Nil," by Paul Schmitz, Kairo (Tr. 482–484). "The Hapless Boers," which purported to be translated from the Dutch of Eugene Vroom, was translated from the German book "England und de Vuren," by Stephen Schroeder, published by the *Deutche Informationsstelle* (Tr. 467–476, 478–479).

[8] According to the manuscript, the author of "Misadventure in Scandinavia" was Carl Herdsen, but Viereck told

At a conference between Hauck, one Prescott Dennett, and petitioner, Dennett indicated that he thought he could do some publicity work through a number of prominent Americans, including Congressmen with whom he was familiar, to promote sales of Flanders Hall books (Tr. 346–351); and this suggestion was later carried out.[8]

Hauck also discussed with petitioner and Senator Rush Holt publication by Flanders Hall of two of Holt's manuscripts, one of which was "Who's Who Among the War Mongers" (Tr. 381–382). Hauck saw the manuscript for "Who's Who Among the War Mongers" at petitioner's apartment in New York, and it then consisted of clippings from the Congressional Record, with

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Hauck to change it to Arno Deutelmoser (Tr. 304–305). Similarly, the author's name for "War Against Women and Children" was changed at Viereck's direction from H. J. Bartone to Werner Schaeffer (Tr. 306–307).

[8] Following the conference Dennett furnished a prospectus of a publicity campaign in which he suggested the obtaining of manuscripts from Congressmen for publication, and petitioner approved of this suggestion (Tr. 353–356). In connection with or as a result of Dennett's publicity work, "The One Hundred Families That Rule the Empire" was mentioned in a radio speech by Congressman Sweeney of Ohio (Tr. 362, 365–366). Flanders Hall also published "We Must Save the Republic," by Congressman Stephen A. Day, of Illinois, after petitioner had improved the manuscript (Tr. 366–368). Hauck received a $1,000 check from the "Make Europe Pay War Debts Committee," signed by Dennett, to be used to promote the sale of Congressman Day's work (Tr. 387).

penciled words connecting them (Tr. 373–374, 1042, 1043). Later he saw the manuscript in typewritten form at Holt's home in Washington (Tr. 383). The original Holt manuscript in clipping form was thereafter intercepted by the British at Bermuda and identified by the censor as having been found inside an envelope addressed to Dr. Hans Dieckhoff, Berlin, Germany, former Ambassador to the United States, which envelope was in turn contained within an outer envelope addressed to Senhor Hoyningero Hueneros, in Lisbon, Portugal, which was an alias used by the German Embassy in Lisbon (Tr. 1048–1061). The addresses on these envelopes had been typed on the same typewriter as were three letters from petitioner to Hauck (Tr. 1036–1037, 1085).

From August until December 1940, Flanders Hall received $11,750 from petitioner, and during 1941, $10,750, or a total of $22,500, none of which was repaid, except that petitioner, acting as agent for the company and the German Library of Information, retained $4,500 from the proceeds of two sales of books which he made to the Library. "The company itself never did make any profit", but "was a losing venture right from the very start" (R. 253–257).

2. *Petitioner organizes "Make Europe Pay War Debts Committee."*—Petitioner conceived the idea of organizing a committee which was first known as the "Make Europe Pay War Debts Committee"

and, subsequently, as "Islands for War Debts Committee" (Tr. 546–547, 605). In addition to petitioner, the organizers of the committee were the late Senator Lundeen, of Minnesota, as chairman, Prescott Dennett, and Linn Gale (Tr. 546–547, 591–592, 598), and offices were established by Dennett in Washington (Tr. 548, 580). The committee carried on a vigorous program of disseminating by mail, under congressional frank, reprints of speeches by various isolationist members of Congress, and other matter inserted in the Congressional Record under their extensions of remarks (Tr. 581).[10]

Late in 1940 or early in 1941 Dennett came to see George Hill, a clerk in Congressman Fish's office and identified himself as being connected with "Make Europe Pay War Debts Committee" (Tr. 535–536). He gave Hill some material and suggested that Hill have it inserted in the Congressional Record. Hill had the article "England Expects Every American To Do His Duty" inserted in the Record under the remarks of Sena-

[10] Seven or eight people were employed "addressing franked speeches" and sending them out to thousands of names contained on mailing lists made up from Congressmen's "fan mail" (Tr. 551–554). "Who's Who in Law and Medicine," "Who's Who in the Clergy," "Who's Who in Business and Commerce," "Who's Who in Business and Industry," and "German-American Board of Trade" (Tr. 542–543, 586–588). "Mail sacks of franked speeches were coming into the office practically every day," and "at one time there were approximately thirty sacks of mail of franked speeches" in the office (Tr. 552–553).

tor D. Worth Clark (Tr. 612–613), and ordered from the Government Printing Office 85,000 copies of reprints at a cost of $373.50, which was paid by Dennett (Tr. 615–616). This procedure was repeated with numerous such articles, Hill receiving from Dennett something like $3,000 over a period of seven to eight months to purchase reprints of what was inserted in the Record (Tr. 623–624).[11]

Throughout this period, petitioner worked closely with Chairman Lundeen of the Committee (Tr. 715–716, 762, 933), and with Dennett "discussing, or going over letters and material and correspondence" (Tr. 548–549). Committee stationery, envelopes, and cards were sent to petitioner in New York; and mailing lists were prepared for him (Tr. 542–543, 546, 586–588), many of which he also furnished to Flanders Hall (Tr. 405–412, 417–418).

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[11] Dennett brought an article, "Giddy Minds and Foreign Quarrels," to Hill and said he could not get anyone else to put it in the Record. Hill had it inserted under the remarks of Senator Clark (Tr. 618) and ordered 10,000 reprints at a cost of $73.45, which was paid by Dennett (Tr. 619–621). Hill had inserted in the Record "Mrs. Lundeen Answers Walter Winchell" and ordered 25,000 reprints thereof at a cost of $55.22, which was supplied by Dennett (Tr. 625–626). He also obtained for Dennett 25,000 reprints of "Aid to England" at a cost of $47.55 (Tr. 624–625); 25,000 reprints of "No Further Without War" at $47.55 (Tr. 626); 60,000 reprints of an article in three parts entitled "You Are on Your Way to War," "Stop the March to War," and "Three Steps to War" at $196.20 (Tr. 626–628); 50,000 copies of "Mrs. Roosevelt is Mistaken" at $86.15 (Tr. 629); 28,000 copies of "Three Warnings" and 30,000 copies of "We Burned Our Fingers Once" (Tr. 630–631).

3. *Petitioner's activities on Capitol Hill.*—Throughout the period of the indictment, petitioner frequented the Senate and House Office Buildings, especially the offices of the late Senator Lundeen of Minnesota and Congressman Hamilton Fish of New York, his friend of ten or fifteen years' standing (Tr. 520, 648, 650, 670, 933). He was also friendly with the stenographers and clerks in these offices and there was testimony that "he was throwing $5 bills for them to buy candy" (Tr. 751; 556).

The record shows that Viereck wrote at least three speeches, two of them in collaboration with the German Embassy, which were delivered by Senator Lundeen, inserted in the Congressional Record, reprinted and distributed under the congressional franking privilege (Tr. 241, 726, 728–730). Thus, on March 23, 1940, petitioner called the German Embassy by telephone from Senator Lundeen's office and told them he had to have "the material for Senator Lundeen's office." After some conversation petitioner stated, "Monday will be all right" (Tr. 722–723). On Monday, March 25, 1940, a messenger from the German Embassy arrived at Senator Lundeen's office with an envelope, asked for petitioner and, when he learned that petitioner was not there at that time, left the envelope and asked that it be delivered either to petitioner or Senator Lundeen (Tr. 723–724). The envelope contained a typewritten speech

concerning the activities of the late Lord Lothian, British Ambassador to the United States, and was entitled "Lord Lothian against Lord Lothian" (Tr. 725). The speech was subsequently published by Flanders Hall in pamphlet form after further revisions by petitioner (Tr. 239–240, 243–246, 765–767, 941), and advertised as containing "The most powerful arguments * * * against spilling the blood of our sons * * * on European battlefields" (Tr. 324).

On another occasion during March 1940, in Senator Lundeen's office, petitioner dictated the outline for a speech entitled, "German-American Trade Relations" (Tr. 936–937). After petitioner and Senator Lundeen went over this outline, petitioner had the German Embassy send to the senator's office the necessary material to fill in the outline (Tr. 938–939). Senator Lundeen did not use the material collected by one of his clerks, saying that petitioner had better material (Tr. 778–779).

In July 1940 Senator Lundeen called George Hill in the office of Representative Hamilton Fish by telephone and mentioned that he was going to make a speech concerning the activities of six important men involving the United States in war, and talked about having copies of it mailed out. Petitioner was there and also talked to Hill about mailing out copies of the speech (Tr. 768–772). At 6:30 that evening, in Senator Lun-

deen's office, the Senator and petitioner were working on a draft of this speech—"Six Men and War"—and petitioner stated, "I have tried to phrase it in the best way I could in the manner in which you speak." At 10:30 that night they were still working on it together in the Senator's office (Tr. 773–775).

At or about this time Representative Fish told Hill that petitioner wanted to mail out some speeches of Senator Lundeen and also told him to send them out to the mailing list of The National Committee to Keep America Out of Foreign Wars, of which Congressman Fish was the chairman (Tr. 519–520, 648, 649–650). Petitioner informed Hill that he wanted to send out 125,000 copies of Senator Lundeen's speech "Six Men and War" and told Hill to contact Senator Lundeen for all of the details including payment. When petitioner learned that the Committee's mailing list had 100,000 names he asked Hill for a copy and gave Hill two $50 bills as a "tip" for it (Tr. 521–523). Petitioner then asked Hill if he had any other lists. Hill replied that he did not, but agreed at petitioner's request to make up a list of "Who's Who in America". Upon delivery of this list, petitioner gave Hill another "tip" of two $50 bills for it (Tr. 521–523, 530). Subsequently, 125,000 copies of the speech "Six Men and War" were mailed out by Hill for petitioner under Senator Lundeen's frank and the Senator paid Hill for them (Tr. 523–527, 607–608).

ARGUMENT

I

Petitioner contends that Section 5 of the Act of June 8, 1938 (Pet. 66), for the violation of which he was indicted, lacked the definiteness and certainty constitutionally required to support his conviction (Pet. 40–49). Petitioner concedes, however, that the Act of April 29, 1942 (Pet. 66–82), "meets the constitutional and other defects" which he finds in the earlier Act (Pet. 30, 46–47, 60); hence, it is clear that his contention, which concerns only his own case, presents no question of general importance requiring review by this Court.

Petitioner's position appears to be that the "material" facts which a foreign agent was required to state in a registration certificate and for the omission of which he was punishable if the omission was willful, were nowhere specified in the Act or in the Secretary's regulations and forms. More specifically, his claim is that since the case was submitted to the jury on the theory that Section 5 [12] (Pet. 66) permitted his conviction and punishment even if the activities which he failed

[12] Section 5, so far as pertinent, provides that "Any person who * * * willfully omits to state any material fact required to be stated therein [in any statement required to be filed under the Act] shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both."

to disclose were activities on his own behalf rather than as agent for a foreign principal (R. 99–100, 101, 110), the Act and the regulations were not specific enough to advise him that omission to state such activities was penalizable.[13]

We submit that the court below correctly held that this contention is without merit. As is apparent from the synopsis of the Act appearing in the opinion below (R. 321–322, 323), there can be no doubt that the purpose of the Act was to require every agent of a foreign principal who disseminated political propaganda in this country

[13] The court below (R. 334–335) adequately disposed of petitioner's suggestion that Section 2 of the 1942 Act which expressly defines the material facts to be disclosed, supplies a *casus omissus* in the earlier Act. The legislative history of the 1942 amendment shows that Section 2 "is merely declaratory with respect to the requirements of the registration statement of foreign agents as now prescribed or may be prescribed by the Secretary of State under section 2 of the existing statute." S. Rep. 913, 77th Cong., 1st Sess., p. 11. Indeed, it may be said that requirement 11 of the registration form received the approval of Congress by its failure to change the Act of June 8, 1938, in any pertinent respect in the amendment of August 7, 1939. Cf. *United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459, 466; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500; *Brewster* v. *Gage*, 280 U. S. 327, 337; *United States* v. *Hines*, 70 App. D. C. 36, 41, 103 F. (2d) 737, 742; *Guaranty Trust Co.* v. *Commissioner of Internal Revenue*, 79 F. (2d) 245, 246 (C. C. A. 2); *Allen* v. *Morsman*, 46 F. (2d) 891, 894 (C. C. A. 8); *The Habana*, 63 F. (2d) 812, 813 (C. C. A. 2). And, in any event, the interpretation of the statute under which the indictment was drawn is a judicial function. *United States* v. *Stafoff*, 260 U. S. 477, 480.

to register and disclose *all* of his political activities on behalf of his foreign employer.[14] But such a measure, concerned as it was with the dis-

[14] The legislative history clearly supports this purpose. A special committee was appointed by the House of Representatives to conduct "an investigation of (1) the extent, character, and objects of Nazi propaganda activities in the United States, [and] (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries * * *" (H. Res. 198, 73d Cong., 2d Sess.). After nine months of investigation, the Committee reported that "this country has been flooded with propaganda material" from various alien organizations outside the United States, which were "engaged in vicious and un-American propaganda activities" for the purpose of gaining "adherents" and "to influence the political opinions of many of our people," and also to "influence, if necessary and possible, our governmental policies." It further found that "all kinds of efforts and influence, short of violence and force, were used to obtain its desired objective, which was to consolidate persons * * * into one group, subject to dictation from abroad" (H. Rep. 153, 74th Cong., 1st Sess., pp. 1, 4, 5, 7, 8, 9, 22). The evils arising from Nazi employment of ostensibly legitimate business connections as a "smoke screen" for propaganda activities was called forcibly to the attention of Congress in unequivocal terms. The Committee "found indisputable evidence to show that certain German consuls in this country, with all the appurtenances of diplomatic immunity, violated the pledge and proprieties of diplomatic status and engaged in vicious and un-American propaganda activities, paying for it in cash, in the hope that it could not be traced." The evidence before the committee showed that petitioner participated in "one of the transactions in question", which involved "the German Embassy itself", and that petitioner "received $1,750 per month with free office space * * * as his share of the $6,000" monthly profit made by his principal, Carl Byoir & Associates. Petitioner also testified before the committee "that he had also been paid the sum of $500 monthly 'for 4 or 5 months' by Dr.

closure of propaganda, would, indeed, have been a halfway one had it not required or, at least, authorized the Secretary to require the registrant to reveal the propaganda he put out on his own as well as the propaganda he put out as an agent. "Otherwise," as was said by the court below (R. 324), "it could not be known in which of his dual capacities a registrant was acting."

Kiep, former German consul-general in New York City, which was paid in cash for advice of a propaganda nature" (*id.*, pp. 5–6).

"As a result of" the Committee's recommendations, a bill (H. R. 1591, 75th Cong., 1st Sess.), which subsequently became the Act under which appellant was indicted (Act of June 8, 1938, c. 327, 52 Stat. 631), was introduced at the next session of Congress "to require all persons who are in the United States for political propaganda purposes—propaganda aimed toward establishing in the United States a foreign system of government, or group action of a nature foreign to our institutions of government, or for any other purpose of a political propaganda nature—to register with the State Department and to supply information about their political propaganda activities, their employers, and the terms of their contracts." The required registration was intended to "publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those who are engaged in this country by foreign agencies to spread * * *. propaganda for the purpose of influencing American public opinion on a political question." Congress was advised that "propaganda efforts of such a nature are usually conducted in secrecy, which is essential to the success of these activities," and that the "spotlight of pitiless publicity" would "serve as a deterrent to the spread of pernicious propaganda," and believed that the passage of the bill would "force propaganda agents representing foreign agencies to come out 'in the open' in their activities" or subject themselves to the penalties provided (H. Rep. 1381, 75th Cong., 1st Sess., pp. 2–3).

By setting up an ostensibly legitimate business connection every registrant could have scoffed at the law and could have engaged unrestrictedly in furthering, by the spreading of propaganda, the objectives of his foreign principal.[15] The court below found (R. 324) on the face of the statute, in Section 3 (c) (Pet. 65),[16] express authority for the Secretary to require the disclosure by a registrant not only of his political activities on behalf of the foreign principal but also the political activities in which he participated on his own behalf. We do not feel that it is necessary to rest upon this section alone as the basis for affording authority to the Secretary to require the disclosure of all political activity of the foreign-paid propagandist. The manifest aim of the statute to require revelation of the source which nurtured foreign propaganda must be con-

[15] As petitioner himself described it in his book "Spreading Germs of Hate" (R. 124), "Propaganda is a campaign camouflaging its origin, its motive, or both, conducted for the purpose of obtaining a specific objective by manipulating public opinion." And as he further wrote (R. 125), "The objective of German propaganda [during the World War] was threefold—to strengthen and replenish Germany, to weaken and embarrass Germany's foes, and third, to keep America out of the War by spreading the truth as Germany saw it."

[16] This dealt with the supplementary registration upon which the indictment is based. It provided that there should be in the supplementary registration statement, "A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

sidered in conjunction with Section 6, providing that "The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act." Certainly, to use the language of the court below (R. 324), "In view of the logical necessity of knowing all of an agent's political activities, either as an agent or on his own and in view of the fact that 'carry out' must mean 'make workable', it appears that the Act authorizes the Secretary to require the full disclosure."

We think that the Secretary's regulations were sufficiently definite to inform the petitioner that a full disclosure of all of his political activities was required. Paragraph (12) of Chapter IV of the regulations provided that "Agents of foreign principals who engage, *whether or not on behalf of their foreign principal*, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration." [Italics supplied.] Since an agent of a foreign principal who engages in political activities on behalf of that principal was specifically required by the Act to register, the paragraph was certainly not needed for the purpose of identifying those who should register. Obviously, therefore, the important clause in the paragraph was that which stated that the agent should register whether or not the activities were on behalf of the foreign principal. "Be-

ing subject to the requirement of registration," regardless of whether his activities are on behalf of the foreign principal, as the court below said (R. 325), consequently "must mean not only the act of registering but also all the duties and concomitants of registration." Certainly the clause sufficiently put the registrant on notice that he might be called upon to reveal his activities whether or not they were on behalf of his principal.

Interpreted in this light, we think that requirement 11 of the form prescribed by the Secretary for registration sufficiently advised the registrant that he was required to disclose all of his political activities, even if they were engaged in on his own behalf. Leaving out of consideration for the moment the 11th requirement, the forms (Pet. 88–90, 95–97) disclose that a registrant who truthfully complied with all of the other listed requirements would have made a complete disclosure of the details of the principal-agent relationship and of the nature of the foreign principal's business. Thus, Item 10 required the registrant to reveal the "Nature of business of foreign principal or principals" (Pet. 88, 95). But, to use the language of the court below (R. 325), "In Item 11 attention is focused upon the registrant and the scope of the statement is enlarged." The registrant was required to make a "Comprehensive statement of nature of business

of registrant." Certainly, confronted with such a registration blank a registrant who certified, as he had to, that he had read the Act "and the regulations issued pursuant thereto" including, of course, Paragraph (12) of Chapter IV, and that he was familiar with the contents of the registration statement (Pet. 90–97), had sufficiently been made aware that when he filled in the 11th item he should fully and in detail, as a paid political propagandist, set forth not only the activities of that nature which he had engaged in for his foreign principal but also the similar activities which he had carried on for himself. Moreover, as the court below stated (R. 326), the form allotted eight and one-half blank lines for an answer to Item 11, and the registrant was advised that "Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith" (Pet. 88, 91, Par. (4), 94, Par. (2)).[17]

Patently, political and propaganda activities such as those which the indictment charged and the proof established that petitioner engaged in,

[17] Since petitioner, as a registrant under the Act, was required to report his propaganda activities whether as agent or otherwise, petitioner's argument (Pet. 56) that the court should have refused the Government's prayers Nos. 2, 2A, and 8 to that effect, and granted his prayer No. 19 to the contrary, is without any tenable basis.

without reporting, during the periods covered by the supplementary registration statements were not adequately described by petitioner when, in response to Item 11, he characterized his business merely as that of "author and journalist." There can be no doubt that this political and propaganda activity was a part of petitioner's business and that it was such regardless of whether it was his business as an agent or his own business.

Furthermore, it should be noted that the sanctions of the statute were not applicable unless the registrant "willfully" omitted to state a material fact. The jury was not only advised that petitioner was required to disclose all of his political activities, whether they were on behalf of his foreign principal or not (Tr. 1601), but that the jury must find that petitioner knew that he was obliged to make such a disclosure and "had the deliberate intention of avoiding the requirements of the statute" (Tr. 1594–1595).[18] Where scienter must first be proved before the penalties of a statute may be applied, there is no real basis for an attack upon the statute based on vagueness. *United States* v. *Ragen*, 314 U. S. 513, 524; *Gorin*

[18] Since, as we have shown, the petitioner was required to report his activities as a propagandist, his contention that he was indicted for something which was not made a crime by the Act of June 8, 1938 (Pet. 58–60), requires no further discussion. Similarly, it is obvious that he was not tried for "being a propagandist," as he contends, but rather because, as required by law, he wilfully omitted to disclose such activity (Pet. 60–61).

v. *United States*, 312 U. S. 19, 27–28; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 501; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348.[19]

In *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, and cases of that nature, relied upon by petitioner, the statute which was held to be too vague and indefinite was not implemented by regulations as in the instant case. A statute which might otherwise be indefinite will not be held to be invalid if it receives administrative or judicial refinement before it is applied. *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 81–82; *Miller* v. *Schoene*, 276 U. S. 272, 281; *Kay* v. *United States*, 303 U. S. 1, 9; *Neblett* v. *Carpenter*, 305 U. S. 297, 302–303; see *Smith* v. *Cahoon*, 283 U. S. 553, 565; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, 242; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233, 239; cf. *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 18; *Old Dearborn Co.* v. *Seagram Corp.*, 299 U. S. 183, 196.

II

Petitioner for the first time advances the contention that the indictment is a nullity because the district court had no power to authorize the grand jury to continue to function after expiration of

[19] See also Briefs for the Government in *United States* v. *Ragen*, Nos. 54–56, October Term, 1941, pp. 24–28, and in *Gorin* v. *United States*, Nos. 87–88, October Term, 1940, pp. 65–86, especially pp. 83–86, where the applicable principles are discussed, and the authorities collected.

the term for which it was originally impaneled (Pet. 35–40). Pretermitting the question whether this contention may properly be raised for the first time on petition for a writ of certiorari (cf. *Rodriguez* v. *United States*, 198 U. S. 156, 164–165; *Agnew* v. *United States*, 165 U. S. 36, 44; *Caha* v. *United States*, 152 U. S. 211, 221; *Powers* v. *United States*, 223 U. S. 303, 312), it is clear that it presents only a question of local law, and, in any event, is without merit.

The indictment recites (R. 1) that the grand jury was impaneled for the July 1941 term of court and began but did not finish, in that term, investigation of the matters charged in the indictment; that pursuant to Section 284 of the Judicial Code, as amended,[20] it was authorized to continue to sit during the succeeding, or October 1941 term, "to finish investigations begun but not finished in the July 1941" term. Petitioner argues, however, that Section 284 is inapplicable and that the procedure required to be followed by the trial court is controlled by statutes exclusively applicable to the District of Columbia. More particularly he con-

[20] Section 284 of the Judicial Code, as amended (28 U. S. C. 421), provides, in part:

"* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than eighteen months * * *."

tends that the extension of the term of the grand jury in this case was in violation of Section 1406, Title 11, of the District of Columbia Code (Act of April 19, 1920, c. 153, 41 Stat. 559), which provides that:

> The term of service of the grand jury in the criminal court shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court. * * *

We submit, however, that this provision, which appears to be nothing more than a codification of the common law rule as to grand jury terms (cf. *Jones* v. *United States*, 162 Fed. 417, 421 (C. C. A. 9), certiorari denied, 212 U. S. 576), should not be construed to prohibit extension of the term of the grand jury to finish investigations begun but not completed during the term for which it was originally summoned. It merely requires that the grand jury must serve during the entire term of court, unless sooner discharged, thus relieving the court from summoning a new grand jury when the one originally impaneled has discontinued its sessions prior to expiration of the term. Adoption of the construction urged by petitioner would produce absurd results, making it impossible in the District of Columbia to obtain an indictment in a case, such as the present one, requiring a lengthy investigation.[21]

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[21] Section 104, Title 23, D. C. Code (Act of March 3, 1901, 31 Stat. 1342, c. 854, sec. 939), lends no support to peti-

III

Petitioner contends (Pet. 52–56) that he was prejudiced by alleged inflammatory remarks made by the prosecutor during the trial and in his closing argument to the jury and by his action in bringing into the courtroom a number of mail bags containing franked speeches (Tr. 663–664, 701–708).[22] As the trial judge (Tr. 1590–1591) and the court below (R. 341) pointed out, objections to the alleged inflammatory remarks were made too late to correct any wrong inference by timely explanation. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 239. With reference to the mail-bag incident, which the opinion below characterized as "unnecessary stage business," it seems obvious that the court correctly held that "the ends of justice would not be served * * * by reversing on instances of improper action like this * * *" (R. 341).[23] Cf. *United States* v.

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tioner's contention. It does not relate to the term of service of a grand jury, but merely provides for enlargement of time within which a person may be held in jail or on bail pending action of the grand jury.

[22] Much of petitioner's argument under this head consists of complaints against the admission of evidence which was damaging to his defense (Pet. 53–54, 57–58), but, as the court below observed (R. 341), petitioner "has not seen fit to stand on the inadmissibility of the evidence."

[23] Petitioner assigns as error, but does not argue, the trial court's action in referring to the legislative history of the statute during his general charge to the jury (Pet. 29) and in excluding one of petitioner's trial counsel from further

Socony-Vacuum Oil Co., supra; Shushan v. *United States*, 117 F. (2d) 110, 116 (C. C. A. 5), certiorari denied, 313 U. S. 574.

CONCLUSION

The case was correctly decided below, and there is involved no question requiring further review by this Court. We, therefore, respectfully submit that the petition for a writ of certiorari should be denied.

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participation in the case after the defense had rested its case (Pet. 33–34). These contentions were adequately disposed of by the court below (see R. 335–336 and 339–340). Similarly he questions (Pet. 9, 29, 34), but does not argue, the propriety of the imposition of costs by the trial court. The court below devoted the last two pages of its opinion to a full consideration of this question (R. 342–343), and we can only add to what was there said that this Court denied certiorari (242 U. S. 633) in the *Oates* case (*Oates* v. *United States*, 233 Fed. 201 (C. C. A. 4)) and the point was there raised in the petition (No. 688, October Term, 1916).

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